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Letter dated 10 April 2008 from the President of the Governing Council of the United Nations Compensation Commission to the President of the Security Council

I am pleased to provide this report on the results of the Governing Council's sixty-fifth session, which was held at Geneva on 8 and 9 April 2008.

During the opening plenary meeting, Costa Rica was elected as one of the Vice-Presidents to replace the Republic of the Congo, whose term concluded in December 2007. Representatives of Kuwait, Iraq, the Islamic Republic of Iran and Jordan addressed the Council. Copies of their respective statements are being sent by mail with the original of this letter. The closing plenary meeting was chaired by the other Vice-President, Indonesia.

During the session, the Council considered a report on the activities of the Commission since the last session.

With respect to the request made by the Iraqi delegation at the opening plenary regarding its level of contribution to the Compensation Fund, the Council reaffirmed its conclusion taken at the sixty-fourth session, which maintained the level of contribution of Iraq to the Compensation Fund at 5 per cent. In doing so, the Council recalled decision 256 (S/AC.26/Dec.256 (2005)) taken by the Council at its fifty-eighth session on the payment mechanism, which, inter alia, provided priority in payment to successful environmental claims and other successful claims with outstanding amounts less than $500 million. The Council welcomed the willingness of the Governments of Iraq and Kuwait to commence consultations under the auspices of the Compensation Commission to discuss the approximately $24 billion that will remain outstanding after the full payment of the environmental awards, and encouraged both Governments to do so. The Council further recommended that the Secretary be requested to attend and facilitate such consultations and report to the Governing Council on the results.

With respect to the issue of arrangements for ensuring that payments are made to the Compensation Fund, the Council noted that the shortfall of income to the Fund had increased from $92 million to approximately $116.3 million with the release of the interim audit results of the Development Fund for Iraq for the six-month period ending 30 June 2007. The Council noted that the mandate of the International Advisory and Monitoring Board was extended to 31 December 2008 by the Security Council in resolution 1790 (2007). The Council also noted that the Controller had not yet responded to the secretariat's request for advice in relation to a letter received from the Iraq Committee of Financial Experts seeking information regarding the Fund, or to the request arising out of the October 2007 session regarding the action that needs to be

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taken, if any, to ensure that 5 per cent of the revenue from the sales of petroleum and petroleum products continue to be deposited into the Compensation Fund following any future transfer of oversight functions from the Board to the Committee. In its conclusion, the Council requested that the Secretary continue to follow up with the Controller, and, if appropriate, with the Committee, to continue to monitor the shortfall and the outcome of future meetings of the Board, and to keep the Governing Council advised of any further developments.

During the session, the Council heard a briefing by the secretariat on the status of the follow-up programme for environmental awards and the progress made to date by the participating claimant Governments. Regarding Kuwait, the Council took note of the second phasing report and the progress made toward selecting a project planning and supervision consultant, and thanked Kuwait for designing an efficient and transparent bidding process. The Council also took note of the baseline report of Kuwait's independent reviewers, submitted through the secretariat, and thanked Kuwait's National Focal Point and independent reviewers. Regarding Saudi Arabia, the Council took note of the phasing report; of the status of Saudi Arabia's bidding process for contracting a project planning, management and supervision contractor; and of the upcoming mission scheduled for May 2008 with Saudi Arabia's National Focal Point, independent reviewers, and the secretariat of the Compensation Commission to develop the independent reviewers' baseline report. Regarding Jordan, the Council expressed concern over the overall lack of progress, and encouraged Jordan to expedite the implementation of its rangeland restoration programme and to report to the Governing Council by its next session in October 2008 on significant progress in that respect.

The Council also considered a request made by the Government of Kuwait to create a mechanism for the management and administration of funds subject to withholding and phased release under decision 258. The four options presented by Kuwait for the Council's consideration were: (1) to establish a separate United Nations account solely for the phased project funds, to be set up and administered by the United Nations Controller's Office under the management of the Compensation Commission; (2) to establish a sub-account within the current Compensation Fund to manage the phased project funds; (3) to maintain the phased project funds within the Compensation Fund as currently structured, then establish a special account to succeed the Compensation Fund once payment of environmental awards under decision 256 (S/AC.26/Dec.256 (2005)) has concluded; or (4) to establish an escrow account in a bank external to the United Nations but subject to such controls as decided by the Governing Council in order to effect decision 258. In its conclusion, the Council requested the secretariat to (1) consult with the Office of the Controller regarding the feasibility of these and other options that may be put forward; (2) consult with Jordan and Saudi Arabia to obtain their views; and (3) prepare an information note providing details of the logistics and implications of all the options considered.

In accordance with the phasing-related withholding mechanism contained in decision 258, the Council requested the secretariat to direct the Governments of Kuwait and Saudi Arabia to segregate and retain future Compensation Fund payments to their respective F4 awards subject to the phasing plan requirements under decision 258, pending future decisions of the Governing Council addressing the disposition of funds under phasing plans.

The Council also considered a report on payment activities, the distribution by Governments and international organizations of payments to successful claimants and the return of undistributed funds.

With respect to five Governments (Benin, Chad, Liberia, Niger and Senegal) that have not complied with their reporting obligations for more than two years, the Council noted that there has been minimal success in obtaining the outstanding distribution reports or the return of undistributed funds, and requested that the secretariat contact those Governments once more before confirming to the Office of the Controller that the Council concurs with the observation of the Office of Internal Oversight Services that further follow-up on this issue is futile.

The Council considered a request from the Office of the Controller dated 19 February 2008 on the issue of the amount of $30.1 million recorded as a receivable in the Compensation Commission financial statements for 31 December 2007 in respect of the amounts remaining after the set-offs and best efforts in relation to the duplicate claims exercise. The Council affirmed its previous conclusion taken at its sixty-third session that no further collection efforts will be pursued by the secretariat, noting however that in the event of funds being returned, the secretariat will continue to receive those funds and report to the Governing Council.

The Governing Council also considered the requests of the delegations from the Islamic Republic of Iran and Jordan at the opening plenary. The Council considered the various points raised by the two delegations with regard to the difficulties faced by them with regard to the set-offs applied to certain of their environmental awards in recovery of overpayments resulting from multiple claims filed by the same or related individual claimants in accordance with the measures approved by the Governing Council. The Council, while expressing its understanding of the resulting difficulties faced by these Governments, reaffirmed its prior decisions regarding measures to be taken to recover overpayments, which were reached after extensive deliberation. Accordingly, while taking note of the request by the Islamic Republic of Iran and Jordan, for which a number of delegations expressed sympathy, the Council declined the requests, and requested that the secretariat so inform the Governments.

With respect to the audit of Compensation Commission activities, the Council took note that the secretariat has worked with the Office of Internal Oversight Services to address outstanding recommendations and that the Office has recently reported to the secretariat that the Compensation Commission is in full compliance with all recommendations. The Council also noted that the secretariat recently received the report from the United Nations Board of Auditors on its audit of the mid-term accounts of the 2006-2007 biennium and that the secretariat will share the report and its response with the Council in advance of the next session. The Council further noted that the Board of Auditors is currently in the process of conducting its audit of the Compensation Commission financial statements for the 2006-2007 biennium.

The Council was informed by the secretariat that the next payment to successful claimants pursuant to decision 256 is scheduled to be on 29 April 2008 and that there are now 27 approved claims (in the corporate and government claims categories), with a total outstanding balance of approximately US$ 29 billion, which have not been paid in full. The overall amount of compensation made available to date by the United Nations Compensation Commission is approximately US$ 23.4 billion.

The Council decided to hold its next regular session on 21 and 22 October 2008.

(*Signed*) Alex **Van Meeuwen**
President of the Governing Council